



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**
Caption in Compliance with D.N.J. LBR 9004-1(b)

LOWENSTEIN SANDLER LLP

Kenneth A. Rosen, Esq.
Joseph J. DiPasquale, Esq.
Eric S. Chafetz, Esq.
Michael Papandrea, Esq.
One Lowenstein Drive
Roseland, New Jersey 07068
(973) 597-2500 (Telephone)
(973) 597-2400 (Facsimile)

Counsel to the Debtors and Debtors-in-Possession

In re:

FRANK THEATRES BAYONNE/SOUTH COVE,
LLC, *et al.*

Debtors.

**Order Filed on July 24, 2019 by
Clerk, U.S. Bankruptcy Court -
District of New Jersey**

Case No. 18-34808-SLM

(Jointly Administered)

Chapter 11

Hon. Stacey L. Meisel

**STIPULATION AND CONSENT ORDER ALLOWING AND PROVIDING FOR
PAYMENT OF CLAIMS UNDER THE FEDERAL PERISHABLE AGRICULTURAL
COMMODITIES ACT AND 11 U.S.C. § 503(b)(9)**

The relief set forth on the following pages, numbered two (2) through six (6), is hereby

ORDERED.

DATED: July 24, 2019

Honorable Stacey L. Meisel
United States Bankruptcy Judge

Page: 2
Debtor: Frank Theatres Bayonne/South Cove, LLC, *et al.*
Case No. 18-34808 (SLM)
Caption: Stipulation and Consent Order Allowing and Providing for Payment of Claims Under the Federal Perishable Agricultural Commodities Act and 11 U.S.C. § 503(b)(9)

The above-captioned debtors (collectively, the “Debtors”) and creditors Sysco Raleigh, LLC (“Sysco Raleigh”), Sysco Southeast Florida, LLC (“Sysco Southeast Florida”), Sysco Charlotte, LLC (“Sysco Charlotte”) and Sysco Virginia, LLC (“Sysco Virginia”, and together with Sysco Raleigh, Sysco Southeast Florida and Sysco Charlotte, “Sysco”) jointly file this stipulation to allow and provide for payment of Sysco’s claims under the federal Perishable Agricultural Commodities Act, 7 U.S.C. § 499a et seq. (the “PACA Statute”) and section 503(b)(9) of the Bankruptcy Code, 11 U.S.C. § 503(b)(9).

I. Background Facts.

1. On December 19, 2018 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned Chapter 11 cases in the United States Bankruptcy Court for the District of New Jersey.

2. Prior to the Petition Date, Sysco was a provider of food, food service supplies and other goods to the Debtors.

3. Also prior to the Petition Date, the Debtors purchased certain fresh and frozen fruits, vegetables and other perishable items of produce from Sysco, which produce Sysco delivered to the Debtors, but for which Sysco was never paid. Pursuant to the provisions of the PACA Statute, all produce delivered to the Debtors by Sysco that specifically meets the requirements set forth in the PACA Statute and the related relevant regulations, and any proceeds derived from the subsequent sale of such produce, are held by the Debtors in trust for the benefit

Page: 3
Debtor: Frank Theatres Bayonne/South Cove, LLC, *et al.*
Case No. 18-34808 (SLM)
Caption: Stipulation and Consent Order Allowing and Providing for Payment of Claims Under the Federal Perishable Agricultural Commodities Act and 11 U.S.C. § 503(b)(9)

of Sysco until the produce has been paid for by the Debtors in full. The PACA Statute trust property does not constitute property of the Debtors or their Chapter 11 estates.

4. In addition, within the twenty (20) days prior to the Petition Date, and in the ordinary course of the Debtors' business, the Debtors purchased, and Sysco delivered to the Debtors, a number of food items, food service supplies, janitorial supplies and other goods, for which goods Sysco was never paid. Pursuant to section 503(b)(9) of the Bankruptcy Code, "the value of any goods received by the debtor within 20 days before the date of commencement of a case" are entitled to priority as administrative expenses of the Debtors' estates.

II. **Stipulation.**

The parties having met and conferred, and with the consent of their respective clients, stipulate and agree as follows:

A. The Debtors and Sysco agree that Sysco is allowed: (1) claims for the PACA Statute-eligible produce delivered prior to the Petition Date (each, a "Sysco PACA Claim"), and (2) claims for goods received by the Debtors within the twenty (20) days prior to the Petition Date (each, a "Sysco 503(b)(9) Claim") as follows:

Page: 4
Debtor: Frank Theatres Bayonne/South Cove, LLC, *et al.*
Case No. 18-34808 (SLM)
Caption: Stipulation and Consent Order Allowing and Providing for Payment of Claims Under the Federal Perishable Agricultural Commodities Act and 11 U.S.C. § 503(b)(9)

	Sysco Raleigh	Sysco Southeast Florida	Sysco Charlotte	Sysco Virginia
Claim Number	178	176	177	164
Total Claim Amount	\$46,585.64	\$86,616.89	\$11,983.84	\$27,139.51
503(b)(9)	\$40,134.17	N/A	N/A	N/A
PACA	\$2,779.00	\$2,662.39	\$567.99	\$854.72
The amount of PACA included in 503(b)(9)	\$2,545.00	N/A	N/A	N/A

- B. The Sysco PACA Claims are allowed in the sums set forth in paragraph II.A above and shall be paid by the Debtors to Sysco in full within ten (10) days after entry of this Stipulation and Consent Order by the Court.
- C. The Sysco 503(b)(9) Claims are allowed in the sums set forth in paragraph II.A above and shall be paid by the Debtors in full at the same time as other allowed section 503(b)(9) claims, as soon as reasonably practicable after the Effective Date (as defined in the Plan) of the *Plan of Reorganization of Frank Theatres Bayonne/South Cove, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code* (as may be amended, modified, or supplemented, the “Plan”) [Docket No. 460], except that the amount of the Sysco 503(b)(9) Claim of Sysco Raleigh shall be reduced by the amount of the Sysco PACA Claim of Sysco Raleigh.

Page: 5
Debtor: Frank Theatres Bayonne/South Cove, LLC, *et al.*
Case No. 18-34808 (SLM)
Caption: Stipulation and Consent Order Allowing and Providing for Payment of Claims Under the Federal Perishable Agricultural Commodities Act and 11 U.S.C. § 503(b)(9)

- D. Any amounts asserted in the Proofs of Claim referenced in paragraph II.A above that are not treated as a Sysco PACA Claim or a Sysco 503(b)(9) Claim shall be deemed to assert a general unsecured claim.
- E. This Stipulation is subject to approval by the Bankruptcy Court. In the event such approval is not obtained, the Debtors and Sysco reserve their rights under the Plan and all such other rights they may have in connection with the Proofs of Claim referenced in paragraph II.A above, and nothing contained herein shall be deemed a waiver or release of same.

III. Requested Relief.

The parties request that the Court, after due notice, approve and enter this Stipulation as an Order of the Court.

Page: 6
Debtor: Frank Theatres Bayonne/South Cove, LLC, *et al.*
Case No. 18-34808 (SLM)
Caption: Stipulation and Consent Order Allowing and Providing for Payment of Claims Under the Federal Perishable Agricultural Commodities Act and 11 U.S.C. § 503(b)(9)

SO STIPULATED this 11th day of July, 2019.

ACCEPTED AS TO FORM:

LOWENSTEIN SANDLER LLP

By: /s/ Eric S. Chafetz

Kenneth A. Rosen, Esq.
Joseph J. DiPasquale, Esq.
Eric S. Chafetz, Esq.
Michael Papandrea, Esq.
One Lowenstein Drive
Roseland, New Jersey 07068
(973) 597-2500 (Telephone)
(973) 597-2400 (Facsimile)
krosen@lowenstein.com
jdipasquale@lowenstein.com
echafetz@lowenstein.com
mpapandrea@lowenstein.com

*Attorneys for the Debtors and
Debtors-in-Possession*

ARNALL GOLDEN GREGORY LLP

By: /s/ Darryl S. Laddin

Darryl S. Laddin
171 17th Street NW, Suite 2100
Atlanta, GA 30363-1031
404-873-8500
darryl.laddin@agg.com

Attorneys for Sysco